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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition For Rulemaking Of The	)	RM _____
Telecommunications Resellers Association	)	
To Eliminate Comity-Based Enforcement Of	)	
Other Nations' Prohibitions Against The	)	
Uncompleted Call Signaling Configuration	)	
Of International Call-back Service	)	

PETITION FOR RULEMAKING OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

TELECOMMUNICATIONS
RESELLERS ASSOCIATION

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SUMMARY

Much has changed since the Commission, at the request of a handful of foreign governments and based on considerations of international comity, reluctantly agreed to enforce the laws of other nations prohibiting the provision of international call-back service using uncompleted call signaling. Most critically, the United States and 69 of its trading partners entered into the Agreement on Basic Telecommunications under the auspices of the World Trade Organization and based on the market-opening commitments embodied therein, the Commission adopted an "open entry policy" for carriers based in WTO countries. As a result, foreign carriers may now freely enter, and compete with U.S. carriers in, the U.S. telecommunications market. Accordingly, there can no longer be any policy justification for Commission recognition or enforcement of foreign laws -- including laws prohibiting the provision of international call-back service using uncompleted call signaling or any other innovative international service alternatives -- intended to restrain U.S. carriers from entering telecommunications markets either in countries which have not committed to allow competitive entry or which have committed to open their markets, but have failed to do so. In fact, continuing to enforce the laws of other nations prohibiting international call-back service would be counterproductive, rewarding those countries that, unlike the United States, have not fully opened their markets to competitive entry by foreign carriers.

Over the last decade, the Commission has been at the forefront of international efforts to foster global telecommunications competition, encouraging foreign governments to open their markets to competition and to adopt pro-competitive, transparent regulatory policies in order to achieve internationally the lower costs and greater innovation that competition has brought to the U.S. domestic market. While the Commission has carried out both the letter and the spirit of the

market- opening commitments made by the United States, many signatories to the WTO Basic Telecom Agreement have made what the Commission has characterized as "limited . . . or no commitments" to open their markets to competition. International call-back service offers one of the few vehicles by which U.S. carriers can enter these otherwise closed foreign markets. Indeed, the Commission has long recognized that innovative international service alternatives such as international call-back service further the public interest by fostering competition and driving down rates in the international telecommunications market.

The Commission, having made the policy judgment to fully and immediately honor its WTO commitments, should not assist other countries which have not done so in enforcing market entry barriers, particularly prohibitions against the provision of the one service that can be provided on a competitive basis despite the efforts of foreign monopoly providers to insulate their home markets from competition. TRA understands that there is only so much the Commission can do to encourage foreign governments to open their markets to competition. The Commission, however, does control its own enforcement mechanisms and can at least refrain from using these mechanisms to actively assist recalcitrant nations in resisting competitive entry.

TRA, accordingly, petitions the Commission to initiate a rulemaking proceeding to rescind all remaining comity-based prohibitions against, and to reverse its policy of enforcing the laws of other nations prohibiting, the provision of international call-back service utilizing uncompleted call signaling. The Commission should no longer allow itself to serve as an unintending accomplice of those who seek to thwart its procompetitive global policies by offering foreign interests a convenient forum for enforcing prohibitions against international call-back service.

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PETITION FOR RULEMAKING OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"),[1] through undersigned counsel and pursuant to Section 1.401 of the Commission's Rules, 47 C.F.R. § 1.401, hereby respectfully requests that the Commission initiate a rulemaking proceeding to rescind all remaining

[1] A national trade association, TRA represents more than 650 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. The large majority of TRA's resale carrier members -- *i.e.*, approximately 70 percent -- provide international telecommunications services as a significant component of their diversified service portfolios; indeed, certain of TRA's members offer international telecommunications service as their exclusive or primary service offering. Roughly 25 percent of TRA's resale carrier members provide international services, in whole or in part, through the uncompleted call signaling configuration of international call-back service.

comity-based prohibitions against,[2] and to reverse its policy of enforcing, the laws of other nations prohibiting, the provision of international call-back service utilizing uncompleted call signaling.[3]

I.

INTRODUCTION

The Commission has long held that innovative international service alternatives such as international call-back service further the public interest by fostering competition and driving down rates in the international telecommunications market.[4] Nonetheless, in its *Call-Back Reconsideration Order*, the Commission, at the request of a handful of foreign governments and based on considerations of international comity, reluctantly agreed to enforce the laws of other nations prohibiting the provision of international call-back service using uncompleted call signaling. Aware, however, that its enforcement of foreign laws barring international call-back service was

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[2] The Commission currently prohibits U.S. carriers from providing international call-back services using uncompleted call signaling to any country which has expressly prohibited by statute or regulatory decision the provision of such offerings from its territory and so conditions all authorizations issued under Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, to provide international switched services.

[3] VIA USA, Ltd., 9 FCC Rcd. 2288 ¶ 18 (1994) ("Call-Back Order"), *aff'd on recon.*, 10 FCC Rcd. 9540 ¶¶ 50 - 55 (1995) ("Call-Back Reconsideration Order"). TRA's rulemaking request is limited to the uncompleted call signaling configuration of international call-back service and does not extend to such network degrading practices as hot line or polling. As described by the Commission, uncompleted call signaling "allows a customer in a foreign country to use foreign facilities to dial a telephone number in the United States and receive dial tone at a switch at . . . [a] U.S. location, which the customer can then use to place a call via an outbound switched service of a U.S. carrier." Call-Back Order, 9 FCC Rcd. 2288 at ¶ 3.

[4] Policy Statement on International Accounting Rate Reform, 11 FCC Rcd. 3146, ¶¶ 12, 20 (1996); Call-Back Order, 9 FCC Rcd. 2288 at ¶ 11.

antithetical to its policy of fostering global telecommunications competition, the Commission sharply limited such enforcement activities to certain "exceptional circumstances."[5]

Much has changed since the adoption of this comity-based enforcement mechanism in 1995. Most critically, the United States and 69 of its trading partners entered into an Agreement on Basic Telecommunications under the auspices of the World Trade Organization (the "WTO Basic Telecom Agreement").[6] As described by the Commission, the WTO Basic Telecom Agreement, whose signatories collectively account for more than 90 percent of worldwide telecommunications revenues, is designed to "replace the traditional regulatory regime of monopoly telephone service providers with procompetitive and deregulatory policies."[7]

"In light of the United States' WTO market access commitments and the market-opening commitments of . . . [its] trading partners," the Commission adopted an "open entry standard for WTO Member country applicants."[8] As a result, foreign carriers may now freely enter, and compete with U.S. carriers in, the U.S. telecommunications market. Accordingly, there can no longer be any policy justification for Commission recognition or enforcement of foreign laws -- including laws prohibiting the provision of international call-back service using uncompleted call signaling or any other innovative international service alternatives -- intended to restrain U.S. carriers from entering telecommunications markets either in countries which have not committed to allow

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[5] Call-Back Reconsideration Order, 10 FCC Rcd. 9540 at ¶¶ 47.

[6] Incorporated into the General Agreement on Trade in Services ("GATS") by the Fourth Protocol to the GATS, April 30, 1996, 36 I.L.M. 366 (1997).

[7] Rules and Policies on Foreign Participation in the U.S. Telecommunications Market (Report and Order and Order on Reconsideration), IB Docket No. 97-142, FCC 97-398, ¶ 2 (Nov. 26, 1997).

[8] Id.

competitive entry or which have committed to open their markets, but have failed to do so. In fact, enforcing the laws of other nations prohibiting international call-back service would be counterproductive, rewarding those countries that, unlike the United States, have not fully opened their markets to competitive entry by foreign carriers.

TRA submits that the time has come to rescind all remaining comity-based prohibitions against the provision of international call-back service utilizing uncompleted call signaling, allowing providers of this and other innovative international service alternatives to compete in the international telecommunications marketplace unshackled by now unwarranted, comity-based deference to anticompetitive foreign laws.[9]

II.

ARGUMENT

A. The Commission Has Clearly And Repeatedly Held That The Uncompleted Call Signaling Configuration Of International Call-Back Service Furthers Important Public Interests

In its *Call-Back Order*, the Commission recited the significant public interest benefits generated by the uncompleted call signaling configuration of international call-back service, noting that it leads to "increased competition" in furtherance of the Commission's "mandate to establish a

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[9] Prior to the Commission's adoption of its "open entry standard for WTO Member country applicants," TRA had consistently supported the Commission's narrowly-tailored comity-based policy of enforcing, at the request of foreign governments, the laws of other nations prohibiting the provision of the uncompleted call signaling configuration of international call-back service within their borders. *See, e.g.*, Supplemental Reply Comments of TRA in VIA USA, Ltd., File No. I-T-C-93-031, at pp. 6 - 7, filed on Nov. 14, 1994; Comments of TRA in Philippine Long Distance Company v. USA Global Link, L.P., D/B/A USA Global Link, File No. E. 95-33, filed on September 29, 1997.

rapid, efficient, nation-wide, and worldwide wire and radio communication service."[10] As explained by the Commission, international call-back service "place[s] significant downward pressure on foreign collection rates to the ultimate benefit of U.S. ratepayers and industry."[11]

In its *Call-Back Reconsideration Order*, the Commission restated its endorsement of international call-back service using uncompleted call signaling, declaring:

> Call-back advances the public interest, convenience and necessity by promoting competition in international markets and driving down international phone rates. We believe it is in the best interests of consumers -- and eventually of economic growth -- around the world.[12]

The Commission concluded that "[s]uch services are in the public interest because they promote increased competition and create incentives for the reduction of foreign collection rates, to the benefit of U.S. consumers and industry."[13]

On a number of subsequent occasions, the Commission has reaffirmed its pronouncement that international call-back service furthers the public interest. For example, in its 1996 *Policy Statement on International Accounting Rate Reform*, the Commission emphasized its policy of actively promoting methods of providing services (such as international call-back service) which vary from the traditional correspondent relationship as a means of reducing international accounting rates.[14] The Commission further declared that it would "continue to encourage U.S.

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10 Call-Back Order, 9 FCC Rcd. 2288 at ¶ 11.

11 Id.

12 Call-Back Reconsideration Order, 10 FCC Rcd. 9540 at ¶ 1.

13 Id. at ¶ 53.

14 11 FCC Rcd. 3146 at ¶ 12.

carriers to provide these types of alternative services" and would "support U.S. carriers" in developing and implementing such innovations which provide "competitive pressures in foreign markets."[15] The Commission recently reiterated these sentiments in its order establishing benchmarks for international accounting rates.[16]

The Commission has also demonstrated its commitment to international call-back service by striking terms in private contracts that could hinder the provision of international call-back service.[17] Noting, for example, that restrictions which Telecommunicaciones de Argentina Telintar, S.A., sought to impose on AT&T Corp. ("AT&T") appeared to be "intended to prevent the use of [Country Direct Service] for the provision of something akin to what is known as 'call-back' service from Argentina," the Commission voided the offending provision, declaring that "[t]he restriction . . . would . . . require AT&T, in the guise of contractual obligation, to accomplish what the Commission refused to do in the call-back proceeding."[18] The Commission explained that it "has long had a policy . . . [of] void[ing] . . . portions of operating agreements that violate Commission policy" and the Argentine contract sought to "require AT&T to frustrate strong Commission policy in favor of resale."[19]

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15 Id. at ¶ 20.

16 International Settlement Rates (Report and Order), IB Docket No. 96-261, FCC 97-280, ¶ 12 (released Aug. 18, 1997).

17 *See* AT&T Corp. Country Direct Service Agreement with Telecommunicaciones Internacionales de Argentina Telintar, S.A., (Memorandum Opinion and Order), 11 FCC Rcd. 13893 (1996).

18 Id. at ¶ 7.

19 Id. at ¶¶ 9 - 10.

That the Commission reached these conclusions is not surprising. International call-back service is merely a form of switched resale,[20] and since 1976, the Commission has maintained a strong policy in favor of allowing resale to bring the benefits of competition to consumers.[21] Consistent with this pro-competitive approach, the Commission has authorized the provision of telecommunications services through the resale of international switched telecommunications services since 1980.[22] And in 1991, the Commission expressly directed U.S. carriers to remove all remaining resale restrictions from their international tariffs.[23]

The Commission has made clear its desire to rely increasingly upon market forces rather than government regulation to constrain undesirable behavior.[24] International resale in general and international call-back service in particular generate precisely the market discipline sought by

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[20] Id. at ¶ 8.

[21] Regulatory Policies Concerning Resale and Shared Use of Common Carrier Facilities, 60 F.C.C.2d 261 (1976), *recon.* 62 FCC 2d 588 (1977), *aff'd sub nom* American Telephone & Telegraph Co. v. FCC, 572 F.2d 17 (2d Cir. 1978), *cert. denied* 439 U.S. 875 (1978).

[22] *See, e.g.,* ITT World Communications, Inc. v. Consortium Communications International, Inc., 76 F.C.C. 15 (1980).

[23] Regulation of International Accounting Rates (Phase II, Report and Order), 7 FCC Rcd. 559, ¶ 23 (1991).

[24] *See, e.g.,* Rules and Policies on Foreign Participation in the U.S. Telecommunications Market (Report and Order and Order on Reconsideration), IB Docket No. 97-142, FCC 97-398 at ¶ 1; Rules and Policies on Foreign Participation in the U.S. Telecommunications Market (Order and Notice of Proposed Rulemaking), 12 FCC Rcd. 7847, ¶ 7 (1997) ("This regulatory philosophy will take advantage of market forces, which are more effective at deterring anticompetitive conduct than our rules would be."); Market Entry and Regulation of Foreign-affiliated Entities (Report and Order), 11 FCC Rcd. 3873, ¶ 9 (1995), *recon. pending* ("We have repeatedly found that, in a competitive environment, market forces can provide the public the statutorily mandated protection against unreasonably high rates and undue discrimination; that is, marketplace forces can replace regulation and make unnecessarily burdensome regulatory requirements for both non-dominant carriers and the Commission.").

the Commission.[25] Indeed, in recognition of this disciplinary effect, the Commission declined to impose an equivalency requirement upon end user international private lines on the ground that international call-back service and other innovative service alternatives would "impose more direct pressure on . . . high foreign collection rates."[26]

B. The Comity-Based Enforcement Policy Adopted By The Commission Was A Discretionary, Rather Than An Obligatory Action

In its *Call-Back Reconsideration Order*, the Commission made clear that the United States had no obligation under International Telecommunications Regulations to "enforce any provision of the domestic law or regulation of any other Member."[27] As the Commission explained,

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[25] Hundt, R., Chairman, Federal Communications Commission, "The Hard Road Ahead -- An Agenda for the FCC in 1997" (Dec. 26, 1996) ("We're also pursuing alternative means to break down international telephony cartel arrangements. For example, we are encouraging new services that facilitate competition, such as . . . call-back services"). *See also* International Settlement Rates (Notice of Proposed Rulemaking), 12 FCC Rcd. 6184, ¶ 12 (1996) ("By means of call-back . . . the customer in effect chooses which country he or she wishes to be the originating country and which will be the terminating country. In cases where the call is between a competitive market and a monopoly market, the competitive market (with competitive pressure on the retail prices charged for IMTS) will almost always be the less expensive point of origination. The caller would presumably choose to originate his or her call from the competitive market. As a result, so long as call-back is legally possible and technically comparable to conventional IMTS, competitive markets will see their balance of traffic with monopoly markets shift to a very heavy imbalance of outbound versus inbound minutes. . . . An excellent example of such a shift in traffic patterns is Hong Kong, where call-back is legal and has been extensively promoted. According to Hong Kong's office of the Telecommunications Authority, traffic between the United States and Hong Kong (where Hong Kong Telecom International enjoys a monopoly over international voice traffic) shifted over a period of eighteen months from a balance of one-to-one to an imbalance in October 1996 of seven minutes outbound from the United States to Hong Kong to one minute inbound from Hong Kong to the United States.").

[26] Regulation of International Accounting Rates (Third Report and Order), 11 FCC Rcd. 12498, ¶ 16 (1996).

[27] Call-Back Reconsideration Order, 10 FCC Rcd. 9540 at ¶ 47.

"foreign governments . . . [can]not, simply by enacting domestic legal, regulatory, or procedural measures, require the United States to implement such measures as a matter of international law."[28] Nonetheless, and despite the acknowledged public interest benefits arising from international call-back service, the Commission, at the request of a handful of foreign governments and in the interest of international comity, opted to honor and enforce foreign laws and regulations prohibiting international call-back service.[29]

Recognizing, however, that such prohibitions were contrary not only to its pro-competitive policies, but to the pro-competitive policies of other like-minded nations,[30] the Commission emphasized that "foreign governments which have decided to outlaw uncompleted call signaling bear the principal responsibility for enforcing their domestic laws."[31] Accordingly, the Commission adopted a narrowly-tailored enforcement mechanism which it made available only to countries which had expressly outlawed international call-back service and which could also demonstrate a practical inability to effectively enforce those laws against U.S. providers.

In order to avail itself of the Commission's limited comity-based enforcement mechanisms, a complaining foreign government thus must demonstrate the following "exceptional circumstances":

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28 Id.

29 Id. at ¶¶ 47, 50.

30 Id. at ¶ 49 ("A study of call-back and other alternative calling procedures by the Organization for Economic Cooperation and Development (OECD) noted that they are driven by price distortions in monopoly-based markets. The OECD study concluded that, by introducing competition for international telephone service, these services 'play a useful role in the market-place and need to be encouraged.")

31 Id. at ¶ 50.

(i) The foreign government must have "expressly found international call-back using uncompleted call signaling to be unlawful," and document such legal restrictions; and

(ii) The foreign government must demonstrate that a U.S. carrier has violated a domestic law or regulation prohibiting international call-back service and provide persuasive evidence of such violations; and

(iii) The foreign government must have diligently attempted, and despite those diligent efforts failed, to enforce its prohibitions against use of international call-back service, and must document its enforcement activities.[32]

Even this limited accommodation, however, does violence to the Commission's pro-competitive international policies. Certainly, principles of international comity do not require U.S. courts and agencies to recognize foreign laws which are in direct conflict with U.S. policy. Indeed, even the resolution on alternate calling services passed at the 1994 International Telecommunications Union ("ITU") Plenipotentiary Conference in Kyoto recognized that comity requires only that "member states having jurisdiction over a call-back provider whose operations infringe another member state's laws inquire into the matter and take such actions *as may be appropriate within the constraints of its national law.*"[33]

As the Commission has acknowledged, the doctrine of comity is "a discretionary means for U.S. Courts and agencies to take account of foreign sovereign acts, and therefore is

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[32] Id. at ¶ 52.

[33] Id. at ¶ 48 (emphasis added).

distinct from obligations imposed under international law."[34] The United States Court of Appeals for the District of Columbia Circuit agreed, explaining that:

> [n]o nation is under an unremitting obligation to enforce foreign interests which are fundamentally prejudicial to those of the domestic forum. *Thus, from the earliest times, authorities have recognized that the obligation of comity expires when the strong public policies of the forum are vitiated by the foreign act.*[35]

In his seminal work on conflicts of laws, Justice Joseph Story noted this limitation on the doctrine of comity, arguing that it "seems irresistibly to flow from the right and duty of every nation to protect its own subjects against injuries resulting from the unjust and prejudicial influence of foreign laws; and to refuse its aid to carry into effect any foreign laws, which are repugnant to its own interests and polity."[36] Indeed, Justice Story reasoned, if a country were compelled to enforce even those foreign laws that conflict with its own policies, the rule "would at once annihilate the sovereignty and equality of the nations . . . or compel them to desert their own proper interest and duty in favor of strangers, who were regardless of both."

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[34] Id. at ¶ 47. The voluntary nature of international comity is also well supported in case law. *See* Cunard Steamship Company Limited v. Salen Reefer Services AB, 773 F.2d 452, 457 (1985), *citing* Somportex Ltd. V. Philadelphia Chewing Gum Corp., 453 F.2d 435, 440 (3d Cir. 1971) ("Although more than mere courtesy or accommodation, comity does not achieve the force of an imperative or obligation.").

[35] Laker Airways, Ltd. v. Sabena, Belgian World Airlines, 731 F.2d 909, 937 (D.C. Cir. 1984) (emphasis added). *See also* Hilton v. Guyot, 159 U.S. 113, 203 (1895) (comity is not appropriate where the laws and public policy of the forum state and the rights of its residents would be violated by enforcement of the foreign edict); RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 482(2)(d) (1986) ("A court in the United States need not recognize a judgment of the court of a foreign state if . . . the cause of action on which the judgment was based, or the judgment itself, is repugnant to the public policy of the United States or of the State where recognition is sought").

[36] J. Story, Commentaries on the Conflict of Laws, 30, 32-33 (1834) (Arno Press ed. 1972).

C. Enforcement Of Other Nations' Prohibitions Against The Uncompleted Call Signaling Configuration Of International Call-back Service Undermines Commission Efforts To Open Global Markets To Competition

Over the last decade, in an effort to achieve internationally the lower costs and greater innovation that competition has brought to the U.S. domestic market, the Commission has encouraged foreign governments to open their markets to competition and to adopt pro-competitive, transparent regulatory policies.[37] For example, "in November 1995, when only a handful of the world's telecommunications markets were open to competition by U.S. carriers, the Commission issued the *Foreign Carrier Entry Order* to encourage foreign governments to open their markets to competition."[38] And the Commission's 1996 *Flexibility Order*, which "opened the way for carriers to engage in alternative arrangements outside of traditional settlement practices to encourage the more economically efficient routing of traffic," and the Commission's recent *Benchmarks Order*, which "requires U.S. carriers to reduce the settlement rates they pay to foreign carriers and also imposes certain conditions on participation in the U.S. market that are aimed at reducing the incentives and ability of a foreign carrier to act anticompetitively to the detriment of U.S.

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[37] *See, e.g.*, Rules and Policies on Foreign Participation in the U.S. Telecommunications Market (Report and Order and Order on Reconsideration), IB Docket No. 97-142, FCC 97-398 at ¶¶ 1 - 12.

[38] Id. *citing* Market Entry and Regulation of Foreign-Affiliated Entities (Report and Order), 11 FCC Rcd. 3873 (1995), *recon. pending*.

consumers," have "pave[d] the way for a new approach to foreign participation in the U.S. telecommunications market."[39]

In February 1997 -- two years *after* the issuance of the *Call-Back Order* and the *Call-Back Reconsideration Order* -- these market-opening efforts came to fruition as 69 nations took the historic step of concluding the WTO Basic Telecom Agreement, in which the United States and most of its major trading partners committed to open their markets for basic telecommunications services to competitive entry. As described by the Commission, "[t]he WTO Basic Telecom Agreement seeks to replace the traditional regulatory regime of monopoly telephone service providers with procompetitive and deregulatory policies."[40] Indeed, the Commission anticipates that "the market-opening commitments of . . . [its] trading partners . . . [will] bring procompetitive developments throughout the world."[41]

Finding "that the binding commitments made by 69 WTO Members to open their telecommunications markets to competition, along with the increased pressure to lower settlement rates and the emergence of new technologies and routing configurations, will bring dramatic changes to the competitive landscape for global telecommunications services," the Commission "adopt[ed] rules . . . opening the U.S. market to competition from foreign companies."[42] Specifically, the

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39 Id. at ¶ 6 *citing* Regulation of International Accounting Rates (Phase II, Fourth Report and Order), 11 FCC Rcd. 20,063 (1996), *recon. pending*, and International Settlement Rates (Report and Order), IB Docket No. 96-261, FCC 97-280 (released Aug. 18, 1997), *recon. pending, pet. for rev. filed sub nom.* Cable and Wireless v. FCC, No. 97-1612 (D.C. Cir. Sept. 26, 1997).

40 Rules and Policies on Foreign Participation in the U.S. Telecommunications Market (Report and Order and Order on Reconsideration), IB Docket No. 97-142, FCC 97-398 at ¶ 2.

41 Id.

42 Id. at ¶¶ 2, 29.

Commission established a presumption in favor of authorizing foreign carriers from WTO Member countries to enter and compete in the U.S. telecommunications market, regardless of whether a particular WTO Member country had made satisfactory market opening commitments *or any such commitments at all.*[43] This open entry standard for carriers from WTO Member countries replaced the effective competitive opportunities ("ECO") analysis which required the opening of foreign telecommunications markets to U.S. carriers as a precondition to entry by foreign carriers into the U.S. telecommunications market. The Commission justified its unilateral opening of U.S. telecommunications markets on the ground that "increased competition in global markets will increase pressure on all WTO Members to liberalize their telecommunications markets, including those that have made no commitments or limited commitments."[44]

The Commission nonetheless acknowledged that "much work needs to be done to ensure the promise of the WTO Basic Telecom Agreement is fulfilled."[45] Declaring that it had carried out "the letter and the spirit of the market-opening commitments made by the United States," the Commission noted its expectation that, like "foreign carriers [that] will begin to enter and compete in the U.S. market," U.S. carriers will "likewise be able to enter and compete in previously closed foreign markets."[46] To ensure that this expectation is realized the Commission committed to "look carefully at market-opening steps taken by the rest of the world."[47]

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43 Id. at ¶¶ 37 - 38.

44 Id. at ¶¶ 38, 39.

45 Id. at ¶ 12.

46 Id.

47 Id.

While "[t]he WTO commitments of . . . [U.S.] trading partners require that they open their markets to competition and promote the introduction of procompetitive regulatory principles," many signatories of the WTO Basic Telecom Agreement, as noted above, have made "limited . . . or no commitments" in this regard.[48] Nonetheless, the U.S. telecommunications market is fully open to carriers based in such countries. This asymmetry of competitive opportunities places U.S. carriers at a distinct disadvantage. Billions of dollars in revenues remain beyond the reach of U.S. carriers and may in fact be used for cross-subsidies that could distort competition on other, open routes.

As the Commission has recognized, "[i]f there is no opportunity for U.S. participation in competitive markets abroad, the benefits of providing international service on an end-to-end basis will flow solely to a dominant foreign carrier and its U.S. affiliate rather than to all competitors on this route."[49] Foreign carriers will have a competitive advantage not "because of any superior business acumen, responsiveness to customers, or technological innovation, but because of . . . protected status in . . . [their] home market[s]."[50] In such circumstances, U.S. consumers of international services "do not receive the maximum benefits of reduced rates, increased quality, and innovation."[51]

International call-back service offers one of the few vehicles by which U.S. carriers can enter otherwise closed foreign markets. The provision of international call-back service requires

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48 Id. at ¶¶ 33, 37.

49 Rules and Policies on Foreign Participation in the U.S. Telecommunications Market (Order and Notice of Proposed Rulemaking), 12 FCC Rcd. 7847 at ¶ 27.

50 Market Entry and Regulation of Foreign-Affiliated Entities (Report and Order), 11 FCC Rcd. 3873 at ¶ 15.

51 Id.

neither the assistance nor the cooperation of the monopoly telecommunications provider in the served country. Indeed, international call-back service is often provided despite the best efforts of monopoly providers to hinder its provision.

The Commission, having made the policy judgment to fully and immediately honor its WTO commitments, should not assist other countries which have not done so in enforcing market entry barriers, particularly prohibitions against the provision of the one service that can be provided on a competitive basis despite the efforts of foreign monopoly providers to insulate their home markets from competition. TRA understands that there is only so much the Commission can do to encourage foreign governments to open their markets to competition. The Commission, however, does control its own enforcement mechanisms and can at least refrain from using these mechanisms to actively assist recalcitrant nations in resisting competitive entry. By offering foreign interests a convenient forum for enforcing prohibitions against international call-back service, the Commission has placed itself in the position of unintending accomplice of those who seek to thwart its procompetitive global policies.

Indeed, the Commission's comity-based enforcement policies may actually hinder pro-competitive, consumer-oriented initiatives within countries which currently seek to thwart competition by prohibiting international call-back service. Just as foreign countries by limiting competitive entry deny "U.S. consumers of international services . . . the maximum benefits of reduced rates, increased quality, and innovation,"[52] so too do they deprive their own citizens of these same benefits. The greater the visibility of these adverse financial and service impacts, the more

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[52] Rules and Policies on Foreign Participation in the U.S. Telecommunications Market (Order and Notice of Proposed Rulemaking), 12 FCC Rcd. 7847 at ¶ 27.

likely it is that the restrictions which occasion them will be subject to legal and/or political challenge by these same citizens. In allowing foreign governments and their monopoly providers of telecommunications services to utilize its enforcement mechanisms to perpetuate bans on the provision of international call-back service, the Commission is providing a forum free of the legal and/or political pressures that might otherwise be brought to bear at home. Not only should "foreign governments which have decided to outlaw uncompleted call signaling bear the principal responsibility for enforcing their domestic laws,"[53] but they should also have to deal with the legal and political fallout from these anti-competitive restrictions.

Assisting countries in preserving monopoly markets by enforcing prohibitions against international call-back service simply cannot be reconciled with clearly enunciated pro-competitive U.S. telecommunications policies. The Commission's comity-based enforcement policies are antithetical to Commission efforts to promote telecommunications competition throughout the world. These policies hinder the ability of U.S. carriers to compete in the global market. And they injure U.S. companies with overseas offices, U.S. citizens working or residing abroad, and others by depriving them of a competitive and lower-cost alternative to the local dominant or monopoly provider of telecommunication services.

Having fully opened U.S. telecommunications markets to competitive entry and committed itself to fostering global telecommunications competition, the Commission should vigorously promote the development and use of innovative, market-opening international service alternatives such as international call-back service. Implicit in the Commission's promise to "look

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[53] Call-Back Reconsideration Order, 10 FCC Rcd. 9540 at ¶ 50.

carefully at market-opening steps taken by the rest of the world"[54] is the obligation to encourage and facilitate market-opening initiatives, both public and private. At a minimum, this commitment requires that the Commission refrain from enforcing laws of other nations which restrict telecommunications competition.

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[54] Rules and Policies on Foreign Participation in the U.S. Telecommunications Market (Report and Order and Order on Reconsideration), IB Docket No. 97-142, FCC 97-398 at ¶ 12.

III.

CONCLUSION

For the foregoing reasons, the Telecommunications Resellers Association respectfully requests that the Commission initiate a rulemaking proceeding to rescind all remaining comity-based prohibitions against, and reverse its policy of enforcing the laws of other nations prohibiting, the provision of international call-back service utilizing uncompleted call signaling.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jeannine Greene-Massey, hereby certify that copies of the foregoing document were mailed this 19th day of March, 1998, by United States First Class mail, postage prepaid, to the following:

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